June 28, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

2011 JUL -1 PM 3:40

Dear Mr. Chairman:

We thank you for your extraordinary efforts to enact legislation that would facilitate U.S. compliance with its consular notification and access obligations and to express the Administration's strong support for S. 1194, the Consular Notification Compliance Act of 2011 (CNCA).

The millions of U.S. citizens who live and travel overseas, including many of the men and women of our Armed Forces, are accorded critical protections by international treaties that ensure that detained foreign nationals have access to their country's consulate. Consular assistance is one of the most important services that the United States provides its citizens abroad. Through our consulates, the United States searches for citizens overseas who are missing, visits citizens in detention overseas to ensure they receive fair and humane treatment, works to secure the release of those unjustly detained, and provides countless other consular services. Such assistance has proven vital time and again, as recent experiences in Egypt, Libya, Syria and elsewhere have shown. For U.S. citizens arrested abroad, the assistance of their consulate is often essential for them to gain knowledge about the foreign country's legal system and how to access a lawyer, to report concerns about treatment in detention, to send messages to their family, or to obtain needed food or medicine. Prompt access to U.S. consular officers prevents U.S. citizen prisoners from being lost in a foreign legal system.

The United States is best positioned to demand that foreign governments respect consular rights with respect to U.S. citizens abroad when we comply with these same obligations for foreign nationals in the United States. By sending a strong message about how seriously the United States takes its own consular notification and access obligations, the CNCA will prove enormously helpful to the U.S. Government in ensuring that U.S. citizens detained overseas can receive critical consular assistance.

The CNCA will help us ensure that the United States complies fully with our obligations to provide foreign nationals detained in the United States with the opportunity to have their consulate notified and to receive consular assistance. By setting forth the minimal, practical steps that federal, state, and local authorities must take to comply with the Vienna Convention on Consular Relations (VCCR) and similar bilateral international agreements, the CNCA will ensure early consular notification and access for foreign national defendants, avoiding future

violations and potential claims of prejudice for those who are prosecuted and ultimately convicted. In this regard, the legislation is an invaluable complement to the extensive training efforts each of our Departments conducts in this area.

The CNCA appropriately balances the interests in preserving the efficiency of criminal proceedings, protecting the integrity of criminal convictions, and providing remedies for violation of consular notification rights. By allowing defendants facing capital charges to raise timely claims that authorities have failed to provide consular notification and access, and to ensure that notification and access is afforded at that time, the CNCA further minimizes the risk that a violation could later call into question the conviction or sentence. The CNCA provides a limited post-conviction remedy for defendants who were convicted and sentenced to death before the law becomes effective. To obtain relief, such defendants face a high bar: They must establish not only a violation of their consular notification rights but also that the violation resulted in actual prejudice. Going forward, the CNCA permits defendants who claim a violation of their VCCR rights an opportunity for meaningful access to their consulate but does not otherwise create any judicially enforceable rights.

After more than seven years and the efforts of two administrations, the CNCA will also finally satisfy U.S. obligations under the judgment of the International Court of Justice (ICJ) in *Case Concerning Avena and Other Mexican Nationals* (*Mex. v. U.S.*), 2004 I.C.J. 12 (Mar. 31). As we expressed in April 2010 letters to the Senate Judiciary Committee, this Administration believes that legislation is an optimal way to give domestic legal effect to the *Avena* judgment and to comply with the U.S. Supreme Court's decision in *Medellín v. Texas*, 552 U.S. 491 (2008). The CNCA will remove a long-standing obstacle in our relationship with Mexico and other important allies, and send a strong message to the international community about the U.S. commitment to honoring our international legal obligations.

The CNCA unmistakably benefits U.S. foreign policy interests. Many of our important allies and regional institutions with which we work closely—including Mexico, the United Kingdom, the European Union, Brazil and numerous other Latin American countries, and the Council of Europe, among others—have repeatedly and forcefully called upon the United States to fulfill obligations arising from *Avena* and prior ICJ cases finding notification and access violations. We understand that the Governments of Mexico and the United Kingdom have already written to Congress to express their strong support for this legislation.

This legislation is particularly important to our bilateral relationship with Mexico. Our law enforcement partnership with Mexico has reached unprecedented levels of cooperation in recent years. Continued noncompliance with *Avena* has become a significant irritant that jeopardizes other bilateral initiatives. Mexico considers the resolution of the *Avena* problem a priority for our bilateral agenda. The CNCA will help ensure that the excellent U.S.-Mexico cooperation in extradition and other judicial proceedings, the fight against drug trafficking and organized crime, and in a host of other areas continues apace.

In sum, the CNCA is a carefully crafted, measured, and essential legislative solution to these critical concerns. We thank you again for your work towards finding an appropriate legislative solution to this matter of fundamental importance to our ability to protect Americans overseas and preserve some of our most vital international relationships.

Sincerely,

Eric H. Holder, Jr.
Attorney General

Hillary Rodham Clinton
Secretary of State

S.1194 -- Consular Notification Compliance Act of 2011 (Introduced in Senate - IS)

S 1194 IS

112th CONGRESS
1st Session
S. 1194

To facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 14, 2011

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Consular Notification Compliance Act of 2011'.

SEC. 2. PURPOSE AND STATEMENT OF AUTHORITY.

(a) Purpose- The purpose of this Act is to facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and any comparable provision of a bilateral international agreement addressing consular notification and access.
(b) Statement of Authority- This Act is enacted pursuant to authority contained in articles I and VI of the Constitution of the United States.

SEC. 3. CONSULAR NOTIFICATION AND ACCESS.

(a) In General- As required under, and consistent with, Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and any comparable provision of a bilateral international agreement addressing consular notification and access, if an individual who is not a national of the United States

is detained or arrested by an officer or employee of the Federal Government or a State or local government, the arresting or detaining officer or employee, or other appropriate officer or employee of the Federal Government or a State or local government, shall notify that individual without delay that the individual may request that the consulate of the foreign state of which the individual is a national be notified of the detention or arrest.

(b) Notice-

(1) IN GENERAL- The consulate of the foreign state of which an individual detained or arrested is a national shall be notified without delay if the individual requests consular notification under subsection (a), and an appropriate officer or employee of the Federal Government or a State or local government shall provide any other consular notification required by an international agreement.

(2) FIRST APPEARANCE- If an appropriate officer or employee of the Federal Government or a State or local government has not notified the consulate described in paragraph (1) regarding an individual who is detained pending criminal charges and the individual requests notification or notification is mandatory under a bilateral international agreement, notification shall occur not later than the first appearance of the individual before the court with jurisdiction over the charge.

(c) Communication and Access- An officer or employee of the Federal Government or a State or local government (including an officer or employee in charge of a facility where an individual who is not a national of the United States is held following detention or arrest) shall reasonably ensure that the individual detained or arrested is able to communicate freely with, and be visited by, officials of the consulate of the foreign state of which the individual detained or arrested is a national, consistent with the obligations described in section 2(a).

(d) No Cause of Action- Nothing in this section is intended to create any judicially or administratively enforceable right or benefit, substantive or procedural, by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person or entity, including, an officer, employee, or agency of a State or local government.

SEC. 4. PETITION FOR REVIEW.

(a) In General-

(1) JURISDICTION- Notwithstanding any other provision of law, a Federal court shall have jurisdiction to review the merits of a petition claiming a violation of Article 36(1) (b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access, filed by an individual convicted and sentenced to death by any Federal or State court before the date of enactment of this Act.

(2) DATE FOR EXECUTION- If a date for the execution of an individual described in paragraph (1) has been set, the court shall grant a stay of execution if necessary to allow the court to review a petition filed under paragraph (1).

(3) STANDARD- To obtain relief, an individual described in paragraph (1) shall make a showing of actual prejudice to the criminal conviction or sentence as a result of the violation. The court may conduct an

evidentiary hearing if necessary to supplement the record and, upon a finding of actual prejudice, shall order a new trial or sentencing proceeding.

(4) LIMITATIONS-

(A) IN GENERAL- A petition for review under this section shall be filed within 1 year of the later of--

(I) the date of enactment of this Act;

(II) the date on which the Federal or State court judgment against the individual described in paragraph (1) became final by the conclusion of direct review or the expiration of the time for seeking such review; or

(iii) the date on which the impediment to filing a petition created by Federal or State action in violation of the Constitution or laws of the United States is removed, if the individual described in paragraph (1) was prevented from filing by such Federal or State action.

(B) TOLLING- The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward the 1-year period of limitation.

(5) HABEAS PETITION- A petition for review under this section shall be part of the first Federal habeas corpus application or motion for Federal collateral relief under chapter 153 of title 28, United States Code, filed by an individual, except that if an individual filed a Federal habeas corpus application or motion for Federal collateral relief before the date of enactment of this Act or if such application is required to be filed before the date that is 1 year after the date of enactment of this Act, such petition for review under this section shall be filed not later than 1 year after the enactment date or within the period prescribed by paragraph (4)(A)(iii), whichever is later. No petition filed in conformity with the requirements of the preceding sentence shall be considered a second or successive habeas corpus application or subjected to any bars to relief based on pre-enactment proceedings other than as specified in paragraph (3).

(6) APPEAL-

(A) IN GENERAL- A final order on a petition for review under paragraph (1) shall be subject to review on appeal by the court of appeals for the circuit in which the proceeding is held.

(B) APPEAL BY PETITIONER- An individual described in paragraph (1) may appeal a final order on a petition for review under paragraph (1) only if a district or circuit judge issues a certificate of appealability. A district judge or circuit judge may issue a certificate of appealability under this subparagraph if the individual has made a substantial showing of actual prejudice to the criminal conviction or sentence of the individual as a result of a violation of Article 36(1) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access.

(b) Violation-

(1) IN GENERAL- An individual not covered by subsection (a) who is arrested, detained, or held for trial on a charge that would expose the individual to a capital sentence if convicted may raise a claim of a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or of a comparable provision of a bilateral international agreement addressing consular notification and access, at a reasonable time after the individual becomes aware of the violation, before the court with jurisdiction over the charge. Upon a finding of such a violation--

(A) the consulate of the foreign state of which the individual is a national shall be notified immediately by the detaining authority, and consular access to the individual shall be afforded in accordance with the provisions of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or the comparable provisions of a bilateral international agreement addressing consular notification and access; and

(B) the court--

(i) shall postpone any proceedings to the extent the court determines necessary to allow for adequate opportunity for consular access and assistance; and

(ii) may enter necessary orders to facilitate consular access and assistance.

(2) EVIDENTIARY HEARINGS- The court may conduct evidentiary hearings if necessary to resolve factual issues.

(3) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to create any additional remedy.

SEC. 5. DEFINITIONS.

In this Act--

(1) the term `national of the United States' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(2) the term `State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

The Consular Notification Compliance Act (S.1194)

Congressional action is needed to ensure the safety of Americans abroad and to protect the international reputation of the United States

Why is congressional action needed?

The Vienna Convention on Consular Relations, a treaty ratified by the United States and thus part of U.S. law, ensures the rights of foreign nationals to have access to consular assistance without delay and of consulates to assist their citizens abroad. The United States is currently in violation of its international treaty obligations in the cases of certain Mexican nationals. The International Court of Justice (ICJ) – which the United States designated as the court with jurisdiction to resolve international disputes regarding the Vienna Convention – has determined that the United States can remedy these violations by granting judicial hearings to determine whether prejudice resulted from the failure to provide consular access to the Mexican nationals named in the Avena case.

Recognizing the binding nature of the ICJ judgment and the importance of compliance to U.S. international relations and bilateral relationship with its key partner Mexico, the George W. Bush Administration attempted to ensure compliance with the *Avena* judgment through Executive Order directing states to provide the required review and reconsideration. In the U.S. Supreme Court's 2008 decision in *Medellín v. Texas*, the Court unanimously found that complying with the ICJ judgment is an international legal obligation of the United States; but held that the remedy could not be enforced through Executive Order. The Court then determined that Congress can act to implement this binding legal obligation across the United States.

What would the proposed Consular Notification Compliance Act (S.1194) do?

The Consular Notification Compliance Act brings the United States into full compliance with its international treaty obligations pursuant to the *Avena* judgment, and also establishes a limited but effective mechanism to ensure improved compliance at the earliest possible point in future proceedings involving foreign nationals charged with serious crimes. It provides for (1) federal court review in cases of foreign nationals convicted and sentenced to death prior to its enactment, specifically and solely on the question of whether they suffered a violation of Article 36 of the VCCR that resulted in actual prejudice; and (2) improved opportunity to ensure early compliance with all consular notification and assistance obligations in future capital cases involving foreign nationals.

This legislation is limited and reasonable in its scope, but will fulfill our current treaty obligations and will have a strong positive impact on future U.S. compliance with the VCCR in the most serious of cases. The U.S. Department of State and the U.S. Department of Justice were closely involved in the development of the legislative language; and the legislation is supported by both of those Departments, as well as the Department of Homeland Security and the Department of Defense.

Congress must act without delay in order to fulfill the United States' treaty obligations and thus ensure the safety of Americans abroad, and to preserve the reputation of the United States as a reliable international partner that respects the rule of law.

The security of Americans abroad is clearly and directly at risk. The Vienna Convention on Consular Relations is critical to the safety of Americans who travel, live and work in other countries around the world: missionaries, Peace Corps volunteers, tourists, business travelers, foreign exchange students, members of the military, U.S. diplomats, and countless others. Being detained by foreign authorities, especially in a country where one does not know the laws or language, can be extremely dangerous to Americans abroad. The United States thus rightly insists that other countries grant Americans the right to consular access.

As a nation that believes in the rule of law and leads in the international arena, the United States must fulfill its undisputed treaty obligations in these cases. Failure to honor our universally-recognized treaty obligations will erode global confidence in the enforceability of the United States' international commitments across a broad range of subjects: foreign relations, international business dealings, trade and investment agreements, and other global affairs.

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Additional information is available at the Department of Justice, Washington, D.C.

Because of safety concerns, diverse and prominent groups including former diplomats, retired military officials, organizations representing Americans abroad, and former prosecutors and law enforcement officials support the passage of legislation to implement *Avena*.

These prominent individuals and groups include the following:

- Former diplomats including John B. Bellinger, former Legal Advisor for the Department of State during the Bush Administration; Thomas Pickering, former Undersecretary of State for Political Affairs and Ambassador to the United Nations; and William H. Taft, former Legal Advisor to U.S. Department of State and Ambassador to NATO.
- Former military officials including Brigadier General James P. Cullen, Colonel Lawrence B. Wilkerson, and Rear Admiral Don Guter.
- Former judges and prosecutors including Honorable Charlie Baird, Hon. John J. Gibbons, and Kenneth J. Mighell, United States Attorney, Northern District of Texas (1977-1981).
- Organizations representing Americans abroad including Association of Americans Resident Overseas, American Citizens Abroad, and Federation of American Women's Clubs Overseas, Inc.
- Americans formerly detained abroad who have first-hand knowledge of the importance of prompt consular assistance, including Euna Lee, one of the journalists recently detained in North Korea.
- Civil and human rights organizations, including Amnesty International.

Congress should act promptly to adopt legislation implementing the limited remedies that will fulfill the nation's treaty obligations. Failure to do so could threaten the security of American citizens abroad and damage our standing as a world leader.

For more information, please contact Katharine Huffman (khuffman@rabengroup.com, 202-466-2479) or William E. Moschella (wmoschella@bhfs.com, 202-652-2346).

English – Language Media Coverage Listing – Humberto Leal

National, Regional, International Print

Austin American-Statesman, EDITORIAL, "Execution Case Important To International Relations," June 10, 2011

Houston Chronicle, EDITORIAL, "Keeping our word: Scheduled Texas execution violates treaty and endangers Americans abroad," June 22, 2011

New York Times, EDITORIAL, "The Treaty And The Law," June 17, 2011

New York Times, John B. Bellinger III, LETTER, "Congress and a Treaty," June 22, 2011

New York Times Texas Edition, Brandi Grissom, "At The Nexus Of Abuse And Execution," June 9, 2011

New York Times, Adam Liptak, "Texas Is Pressed to Spare Mexican Citizen on Death Row," June 27, 2011

San Antonio Current, Michael Barajas, Illegal Injections: How Texas Is Breaking The Law, One Execution At A Time, May 25, 2011

Washington Post, EDITORIAL, "Why The U.S. Should Allow Arrested Foreigners To Contact Their Consulates," June 13, 2011 (picked up by the Minnesota Star Tribune and the Fort Wayne Journal Gazette)

Washington Post, Thomas R. Pickering, LETTER, "Delay This Execution," June 18, 2011

Washington Post, Euna Lee, OPINION, "Consular access: A two-way street on a crucial rights," June, 24, 2011

Online and Broadcast

Huffington Post, Sandra Babcock, "Texas Execution Could Risk Americans' Safety Abroad," June 9, 2011

Opinio Juris, Duncan Hollis, "Proposed Legislation Seeks VCCR Compliance By The United States," June 14, 2011

National Law Journal, Lori Damrosch, "Time to comply with the Vienna Convention," June 27, 2011

National, Regional, International Print

Austin American-Statesman
EDITORIAL
June 10, 2011

Execution Case Important To International Relations

The Golden Rule of life also applies to the tricky business of international relations. What we do to non-Americans in our country we can reasonably expect to be done unto Americans in other countries.

It is for that reason that Gov. Rick Perry and the Texas Board of Pardons and Paroles — both in the uncommon position of making a decision with international impact — should commute or postpone the death sentence of Humberto Leal, a Mexican raised in Texas, scheduled to die July 7 for the 1994 murder of Adria Sauceda, 16, in Bexar County.

The key issue in this case at this point is not whether Leal committed the crime. Also not central now are the circumstances involving Leal, including sexual abuse by a priest, a challenging family history and other factors that, though significant, fail to add up to justification for murder. They could, however, count as mitigating factors that argue for a life sentence.

It's what happened after Sauceda was killed that is at issue. More specifically, it's what didn't happen. Despite the Vienna Convention on Consular Relations requirements, Leal was not informed of his right to contact Mexican officials to seek legal assistance. Records indicate that he was not aware of that right until told about it by a fellow death row inmate.

Instead of getting legal help from Mexican consular officials, who have a track record of providing quality legal representation for Mexicans facing the death penalty in the U.S., Leal was represented by a court-appointed team that included a lawyer who twice had his license suspended.

Back in 2004, the International Court of Justice said Leal was entitled to a hearing to determine the extent of harm he suffered as a result of the lack of consular access. A U.S. Supreme Court ruling has said the U.S. must comply with the decision by the international court. Texas, citing state law, said no such hearing could take place. Congress now is poised to consider legislation, to be filed in coming weeks, that would establish a procedure for a federal court hearing on the extent of harm caused to Leal because he was not advised of his right to contact Mexican officials.

In a clemency petition filed this week, an impressive list of former U.S. diplomats, retired military leaders and others concerned about international matters urged a stay of execution to grant Congress time to deal with this case.

At stake, they said, are the consular rights of Americans who become entangled in legal problems while out of the country.

"For Texas to proceed with (Leal's) execution prior to full compliance with these treaty obligations would endanger the interests of American citizens and the United States around the world," John B. Bellinger III, a State Department legal adviser in the George W. Bush administration, said in a letter signed by others and delivered to Perry.

The former military leaders told Perry that "improving U.S. enforcement of its consular notification and legal access obligations will help protect American citizens detained abroad, including U.S. military personnel and the families stationed overseas."

Sandra L. Babcock, a Northwestern University law professor representing Leal, said he would not have been convicted if he had received proper consular assistance. We have no way of knowing that. But there is no arguing with Babcock's contention that "with consular access, Mr. Leal would have had competent lawyers and expert assistance that would have transformed the quality of his defense."

And, as she noted, Mexican officials have developed expertise in helping Mexicans facing the death penalty in the U.S.

"It really is a very modest remedy we are talking about," Babcock said.

Modest, indeed, but with important international ramifications.

Houston Chronicle
EDITORIAL
June 22, 2011

Keeping our word: Scheduled Texas execution violates treaty and endangers Americans abroad

Americans traveling abroad are protected, whether they are aware of it or not, by a treaty called the Vienna Convention on Consular Relations, ratified by about 170 countries, which guarantees them access to U.S. consular assistance if they are detained or arrested in a foreign country. In 2010, more than 6,600 Americans were arrested abroad, and more than 3,000 were incarcerated. Many of them benefited from the protections of this treaty.

But unfortunately, the U.S. has repeatedly failed to offer those same protections to foreigners on U.S. soil. The most egregious of these violations is the denial of consular assistance to foreign nationals convicted and sentenced to death. (Currently, about 100 foreign nationals are on U.S. death rows.) And in a particularly urgent case, one of those individuals whose rights were violated, a Mexican national named Humberto Leal Garcia, is scheduled to be executed on July 7 in Huntsville.

Because a bill has been introduced to bring the U.S. into compliance with the treaty, Leal's attorneys have filed a federal petition and a motion for a stay of execution so that Leal will be alive and eligible for the remedies of this legislation when it becomes law.

There are compelling reasons why these petitions should be granted. Chief among them is the fact that this pending legislation will allow for review of cases like Leal's, said his attorney Sandra Babcock, "where lack of consular assistance may well have made the difference between life and death. That's why the consular access really matters." Mexico provides top-flight legal assistance to its nationals under such circumstances.

Leal's court-appointed attorneys were ineffective and inexperienced, Babcock told the Chronicle, resulting in harm to Leal in both the guilt-or-innocence and the penalty phases of his trial. According to Babcock, they failed to challenge the prosecution's "junk science" and flawed DNA evidence or to present expert testimony on Leal's learning disabilities and brain damage. Leal, sentenced to death for the 1994 rape and murder of a 16-year-old girl, was then 21 and had no criminal record.

Also, there is no dispute that this treaty is the law: In 2003, Mexico filed suit against the U.S., claiming that 51 Mexican nationals sentenced to death in U.S. courts had been denied consular access. (Leal was one of them.) In 2004, the International Court of Justice ruled that the U.S. must review those individuals' cases. The issue was finally resolved, in 2008, by the U.S.

Supreme Court, which unanimously supported the ICJ decision but ruled that it was up to Congress to implement it.

That is what Senate Judiciary Committee Chairman Patrick Leahy addressed last week, when he introduced legislation to allow federal courts to review such cases, and to increase compliance and provide remedies.

And finally, as Leahy eloquently stated, the U.S. failure to honor its treaty obligations "undercuts our ability to protect Americans abroad and deeply damages our image as a country that abides by its promises and the rule of law. It would also be completely unacceptable to us if our citizens were treated in this manner."

For all of these reasons, we urge Congress to act swiftly to pass this legislation, and we urge Gov. Perry to give Leal, and others in his situation, the time to benefit from its remedies if they are shown to have been harmed.

New York Times
June 17, 2011

The Treaty And The Law

Humberto Leal García Jr., a Mexican citizen who faces execution in Texas next month, has petitioned Gov. Rick Perry for a six-month reprieve. He is asking for a stay under a vital international law, the Vienna Convention on Consular Relations, which requires that foreign nationals who are arrested be told of their right to have their embassy notified of that arrest and to ask for help.

In recent years, the treaty has provided important protection for Americans who have been detained in Iran, North Korea and elsewhere. Mr. Leal was not notified after his arrest of his right to contact his embassy. But the Supreme Court ruled in 2008 that Texas did not need to comply with the treaty because there is no federal law requiring that states do so.

Senator Patrick Leahy of Vermont on Tuesday introduced a bill that makes clear that federal law requires that states tell foreign nationals who have been arrested that they can contact their consulates for help.

For those who were convicted and sentenced without being told, the bill would let them ask a federal court to review their case and decide whether the outcome would have been different if they had had diplomatic help. After the bill was introduced, Mr. Leal petitioned Federal District Court for a stay to keep Texas from "rushing to execute" him before Congress has time to act.

Mr. Leal, convicted of murder during a sexual assault, had grossly incompetent legal representation. If he had been given access to a Mexican diplomat, he would have had a chance at better counsel and likely the opportunity to strike a plea deal, avoiding the death penalty.

For the sake of justice, the governor and court should grant the stays. For the protection of foreigners arrested here, and American citizens arrested abroad, Congress should pass Senator Leahy's bill.

New York Times Texas Edition
LETTER
June 9, 2011

Congress And A Treaty

To the Editor:

Re "The Treaty and the Law" (editorial, June 18):

You are right to urge Congress to pass legislation to require federal courts to review the convictions of certain foreign nationals, including 40 Mexicans, on death row in Texas and other states who were not notified by state officials of their right to speak to a consular officer of their governments, in violation of United States treaty obligations. But you did not mention that review of the convictions of the Mexicans was mandated by a 2004 decision of the International Court of Justice.

In 2005, President George W. Bush ordered Texas and other states to review the Mexican convictions, but the Supreme Court, while acknowledging that the United States is bound under the United Nations Charter to comply with the World Court ruling, held that the president could not order the states to comply without federal legislation.

Some members of Congress may now be reluctant to take action to comply with a World Court decision, but they should recognize, as the Bush administration did, that the United States cannot expect other countries to comply with their treaty obligations to us unless we comply with our treaty obligations to them.

JOHN B. BELLINGER III
Washington, June 19, 2011

The writer served as the legal adviser for the State Department in the second term of the George W. Bush administration.

New York Times Texas Edition
June 9, 2011

At The Nexus Of Abuse And Execution

By Brandi Grissom

St. Clare's is a small church with a tight-knit congregation in this impoverished south side neighborhood, a place where neighbors come for a respite from the gritty streets.

But in the 1980s, it became a place of fear and shame for children who allege they were victims of sexual abuse by a prominent priest.

One of those alleged victims is Humberto Leal, a death row inmate who in 1995 was convicted of raping and bludgeoning to death a 16-year-old girl. His attorneys this week filed a clemency petition on his behalf. They asked Gov. Rick Perry and the Texas Board of Pardons and Paroles to stay his execution and allow him to testify both as a victim and a witness of abuses allegedly perpetrated decades ago by Father Federico Fernandez, who served at St. Clare's from 1983 to 1988.

Now, others who attended St. Clare's have been spurred by Mr. Leal's recent revelations to come forward and report similar abuse. They hope that by telling their stories they can stop the July 7 execution of Mr. Leal, and spur law enforcement to investigate and prosecute Father Fernandez.

The priest, who currently works in a church in Bogotá, Colombia, denies ever abusing anyone.

Church authorities in San Antonio removed him from the parish and sent him to New Mexico for treatment in 1988 after a grand jury indicted him for sexually abusing two other boys. In statements to police, the boys described multiple occasions when Father Fernandez schemed to get them alone and groped them. After the indictment, the boys' family reached a settlement with the church, and the young men decided not to testify. Charges against Father Fernandez were dropped, and terms of the settlement were sealed.

Even before Father Fernandez arrived at St. Clare's, he had been accused of sexual misconduct. In 1983, San Antonio police charged him with exposing himself in public, though the charges were eventually dropped. And since Mr. Leal's revelation, others who attended St. Clare's have reported similar abuse.

Under the shadow of a spindly tree in St. Clare's parking lot — the modest structure where he was baptized and later married — a mild-mannered 44-year-old in work boots described how the priest who had been his boyhood role model nearly shattered his faith.

"I wanted to give myself to the church, and I got something bad," said the man, who is not being identified because he is a victim of sexual abuse.

At 15, he wanted to be a priest. He faithfully attended Bible classes at St. Clare's. He grew close to the priests there, and in particular Father Fernandez. It was Father Fernandez, he said, who took him into a room alone and then stripped naked in front of him.

"I was just played for a fool," he said. But now he hopes that exposing his pain can help relieve someone else's. "This person killed persons in their heart and their faith, and he gets away with it."

As is usually the case in a criminal matter, the facts of what led to Mr. Leal facing execution next month are in dispute — all, that is, except that Adria Sauceda was raped and murdered. Mr. Leal maintains he did not rape the girl and witnesses testified at his trial that she had been gang raped at a party. Witnesses told the authorities that Mr. Leal arrived at the scene and, outraged at what had happened to her, took her away from the party. He admitted that he and Ms. Sauceda physically fought after they left, and that she could have died after he pushed her and she hit her head on a rock. The police found her body about 100 yards from the location of the party.

Mr. Leal's attorneys argue that his court-appointed lawyers did little to defend him. They also say his original lawyers failed to investigate the abuse he says he suffered at the hands of the priest — evidence that might have persuaded jurors to spare him the death penalty.

"This is the kind of evidence that is so deeply compelling and humanizing that for the jury not to have heard it and not to have been able to consider it is reason alone to stay this case," said Sandra Babcock, a Chicago-based lawyer.

For Mr. Leal, St. Clare's was a refuge from an abusive home. His mother once tied him and his sister to a tree and beat them when they tried to escape, his lawyers say. When he misbehaved in communion classes, nuns would send Mr. Leal to Father Fernandez for punishment.

In March, during an interview with Dr. David Lisak, the forensic psychologist retained by his attorneys, Mr. Leal for the first time described the kind of punishment he received from Father Fernandez. It began with inappropriate touching and culminated, Mr. Leal said, with anal rape when he was in fifth grade. Dr. Lisak wrote that during the interview Mr. Leal "was experiencing intense humiliation and shame," adding it was "so intense that he could not continue speaking."

René — who asked that only his first name be used to protect the identity of his family — attended St. Clare's from the time he was 7 in the 1950s. He was married there, and all six of his children were baptized in the church. When Father Fernandez arrived, René was the youth minister. He felt uneasy about Father Fernandez from the start, he said. Not long after, some of the youths began to tell alarming stories about unusual activities initiated by the priest. But his warnings to church authorities went unheeded, he said, and he and his family left St. Clare's for another parish.

Then, last year, one of René's daughters revealed that Father Fernandez had abused her, too. René said he knew Mr. Leal and his family from the neighborhood. Given his daughter's experience and those of other children, René said he believes Mr. Leal's story. "He's describing the same things other people are describing," he said. "Our government shouldn't kill the guy until all this has been settled."

Reached by phone in Bogotá, where he is serving at the Templo de San Francisco, Father Fernandez said he did not remember Mr. Leal. "No, never, I never abused sexually anybody," he said. "I never met a person with that name."

Deacon Pat Rodgers, spokesman for the Archdiocese of San Antonio, said authorities there have informed the Franciscan Order, to which Father Fernandez belongs, of the new allegations by Mr. Leal. He said the diocese had been unable to locate Father Fernandez. "Things are moving as quickly as they can, but we have very little information to go on," Mr. Rogers said.

The head of the international order of Franciscan priests wrote to state officials on Mr. Leal's behalf. Father William Spencer wrote that he could not confirm Mr. Leal's account of abuse, but given Father Fernandez's history, it raises the possibility that jurors who sentenced Mr. Leal to death were unaware of mitigating evidence that could have persuaded them to imprison him for life instead. Father Spencer did not return calls requesting comment.

Katherine Cesinger, a spokeswoman for Mr. Perry, said the governor could not grant a reprieve without a recommendation from the Board of Pardons and Paroles.

Enrico Valdez, chief of the Bexar County district attorney's appellate division, said his office is not considering withdrawing Mr. Leal's execution date.

"I'm always a little suspect when it's right before an execution date that claims of this nature arise," Mr. Valdez said, noting that Mr. Leal has had many opportunities since he was convicted to bring up his claims of sexual abuse. "There really is no reason at this point to delay the execution any longer."

New York Times
June 27, 2011

Texas Is Pressed to Spare Mexican Citizen on Death Row

By Adam Liptak

WASHINGTON — Texas is planning to execute Humberto Leal Garcia Jr. next week. His case is in many ways unexceptional: ghastly crime, substantial but problematic evidence, inept defense lawyer.

In another sense, though, Mr. Leal's case is different from those of the six men Texas has already put to death this year.

He is a citizen of Mexico. After his arrest, he was denied his rights under the Vienna Convention to consult Mexican consular officials.

Had his government been allowed to come to his aid, Mr. Leal's lawyers say, he might still have been convicted. But they say that legal help from the Mexican government would almost certainly have kept him off death row.

Former judges, law enforcement officials, military leaders and diplomats have lined up on Mr. Leal's side. Most take no position on Mr. Leal's guilt or on the death penalty. Their argument is more practical.

"If we do not comply with our obligations under the Vienna Convention on Consular Relations and the U.N. Charter," said John B. Bellinger III, who was the State Department's top lawyer in the administration of President George W. Bush, "we put at risk Americans, including Texans, who travel and may be arrested overseas. It is surprising that Texas does not recognize the risks it may be creating for its own citizens."

True, Texas provided Mr. Leal with a lawyer. But the convention requires that arrested foreigners also be told of their right to speak with consular officials and to be put in contact with them "without delay."

Billy Hayes, whose ordeal in a Turkish prison was the subject of the movie "Midnight Express," wrote a letter to Gov. Rick Perry this month urging him to grant a reprieve to Mr. Leal. In an interview last week, Mr. Hayes said he could not have imagined negotiating the Turkish legal system without the emotional support and logistical help that American diplomats provided.

"It's a different country," he said, "different language, different law and different rules."

Mr. Leal, by contrast, did not learn of his rights until two years after his conviction, and even then not from American authorities but from a fellow inmate.

In 2004, the International Court of Justice in The Hague ruled for Mr. Leal and other Mexican inmates on death row in the United States, saying that American courts must grant "review and reconsideration" to claims that their cases had been hurt by the failure of the local authorities to allow them to contact consular officials.

In 2005, Mr. Bush told state officials that they must comply with the international court's decision. Mr. Bush's memorandum puzzled officials in Texas, who said it seemed inconsistent with the Bush administration's general hostility to international institutions and its support for the death penalty. Texas refused to go along, and in 2008 the Supreme Court said two things about that.

One was that the United States was obligated to comply with the international tribunal's judgment. The other was that the president alone could not by himself force states to go along; Congress had to act, too.

Such legislation was submitted in the Senate this month. Its prospects are unclear, but it certainly won't be enacted by July 7, when Mr. Leal is scheduled to die.

Mr. Leal's lawyers asked Judge Orlando L. Garcia of Federal District Court in San Antonio to stay the execution. Sandra L. Babcock, one of Mr. Leal's lawyers, explained the legal theory behind the request.

"He has a due process right," she said of her client, "to remain alive while Congress has a meaningful opportunity to consider and pass this legislation."

Judge Garcia rejected the request on Wednesday. "The filing of a legislative proposal in the form of a bill is of no legal consequence," he wrote.

Mr. Leal has also asked the governor for a reprieve. Mr. Perry's press secretary, Katherine Cesinger, suggested that he did not view the matter through the lens of reciprocal international obligations.

"If you commit the most heinous of crimes in Texas," she said, "you can expect to face the ultimate penalty under our laws, as in this case."

There is substantial evidence, including statements from Mr. Leal, that he was involved in the gruesome 1994 killing of Adria Sauceda, 16. Mr. Leal's lawyers concede that "the argument that Mr. Leal was responsible for Ms. Sauceda's death was at least plausible."

But they say prosecutors transformed what should have been at most a manslaughter charge into one for capital murder by saying Mr. Leal had kidnapped and raped Ms. Sauceda. "For this," the

lawyers wrote in their brief seeking a stay, "the state built its case on junk science, willful ignorance and profoundly problematic DNA evidence."

Mr. Leal's court-appointed lawyer failed to investigate or challenge questionable evidence, and he did not present information about Mr. Leal's background that might have supported a plea for leniency. Would a better lawyer retained by the Mexican government have made a difference?

Maybe. Or maybe the right question is the one posed years ago by Donald F. Donovan, a New York lawyer who represented the Mexican government in The Hague.

"If you were arrested in Damascus and they gave you a dime," he asked, "would you want to call your court-appointed lawyer or the American Embassy?"

San Antonio Current
May 25, 2011

Illegal Injections: How Texas Is Breaking The Law, One Execution At A Time

By Michael Barajas

In the early hours of May 21, 1994, 16-year-old Adria Sauceda and dozens of others attended a raucous Southside house party on Vincent Street, where witnesses reported seeing a dazed Sauceda — pumped full of alcohol, cocaine, and marijuana — pulled to the backyard. There she was stripped and circled by eight or nine men, each "taking turns" on the disoriented teenager. Friends who came to her aid were told to shut up, drink, and quit spoiling the party.

Later that morning, Humberto Leal, Jr. showed up, furious about what had happened to Sauceda, according to witnesses. He insisted on taking the girl home, saying she was a neighbor of his. Hours after Leal drove off with the victim in his father's 1977 Mercedes, police found the girl's naked and beaten body in a field just yards away from the house. She had been repeatedly raped, lastly with a crude wooden plank, and bludgeoned to death.

The account of that tragedy, pulled from hundreds of pages of trial transcripts and case files, is complex and, Leal's defense now claims, filled with holes. Leal has always claimed he left the party with the victim that drunken night, and admitted to police he may have accidentally killed her during an alcohol-fueled fight on the side of the road. But for over a decade, Leal has denied he ever kidnapped or raped the victim.

But Leal's imminent execution is now entangled in a controversy that has dogged the administrations of two U.S. presidents. Set to die by lethal injection this summer, the execution of the Mexican national flies in the face of international law, the wishes of the Mexican government, and even the U.S. Supreme Court. Leal, born in Monterrey, Mexico, is one of 50 Mexicans sitting on death row who have been charged, tried, and sentenced to die without gaining access to Mexican consular officials — a clear violation of a long-standing international treaty that protects thousands of Americans arrested abroad each year.

Leal's lawyers claim the lack of access to the Mexican consulate sabotaged his case from the start, equipping him with a hopelessly inadequate defense team that failed to challenge the case against him. A review of the trial, they say, reveals a shoddy investigation that left more questions than answers in the wake of Sauceda's brutal 1994 slaying.

While denied a retrial and, as of yet, the ability to re-test a crucial piece of evidence that secured his conviction, Leal's lawyers say a judicial review, as requested by numerous U.S. and Mexican officials, would give the case a fair shake and flush out any uncertainty that still looms over the investigation into the teenager's tragic murder.

International law & Texas

In 1988, after Javier Suarez Medina, a Mexican citizen, shot and killed an undercover Dallas police officer, authorities quickly charged, tried, and sentenced him to death before learning of his right, under the Vienna Convention on Consular Affairs, to contact the Mexican consulate.

When the Mexican government learned of the case against Medina, it launched a campaign urging the U.S. to retry him, sparking a cause célèbre in Mexico as waves of politicians vowed to force the Lone Star State into compliance with international law.

Governor Rick Perry rebuffed the Mexican government and executed Medina in 2002, prompting Mexico to take the U.S. before the International Court of Justice in The Hague for violating the long-standing international treaty. In response, the international court ordered the U.S. to review some 50 capital murder cases like Medina's, including Leal's. Still stinging from the execution, then-President Vicente Fox, a close U.S. ally, canceled a trip to meet with President George W. Bush at his Crawford ranch, saying, "It would be inappropriate to carry out this trip to Texas given these lamentable circumstances."

John Bellinger, lead attorney with the U.S. State Department under President Bush's second term, saw firsthand the administration grappling with how to approach the death-row cases after the ICJ's ruling. "We had very lengthy discussions inside the federal government. These were very unpleasant cases, and nobody wanted to appear to be siding with some convicted Mexican rapists and murderers," he recalled.

To the shock of many, Bush, a pro-death penalty president from a pro-death penalty state, chose to enforce the international court's ruling. "This really surprised both liberals and conservatives because no one expected that President Bush was going to order compliance with an international tribunal in The Hague. ... If you remember, no one at that time thought that he was really all that committed to international law," Bellinger said.

Bush, he said, was persuaded by the State Department's argument that reviewing the cases was "not a favor for the Mexicans" but rather ensured the protection of Americans traveling abroad. "If we don't comply with our obligations ... how can we expect other countries will comply with theirs?"

Texas pushed back against its former governor, and fought the case up to the U.S. Supreme Court, which ruled that while it is crucial for Texas to review the death-row cases, only Congress has the authority to force the state do so. In a concurring opinion, now-retired Supreme Court Justice John Paul Stevens still explicitly told Texas to settle the issue. Having already "ensnared the United States in the current controversy," Stevens wrote it was up to Texas to prevent the breach of international law.

After the administration lost the Supreme Court case, Mexico took the U.S. back to the international court, and the ICJ ordered the U.S. to stay the execution of Jose Medellin, another

Mexican citizen who never saw help from his consulate after he was convicted of the heinous 1993 strangulation and rape of two Houston-area teenage girls.

Perry went ahead with the execution, his staff telling reporters, "The [ICJ] has no jurisdiction here in Texas. We're concerned about following Texas law and that's what we're doing."

"This case, it's quite troubling, speaking for myself as the former legal advisor of the State Department, the department that protects Americans around the world," said Bellinger. "Texas authorities did not see the importance of complying with the Vienna Convention for their own citizens in Texas. ... I'm sure they'd feel rather differently if Mexico had arrested residents of Texas who were U.S. citizens and then failed to give them access to the State Department."

'There was just so much drinking'

Humberto Leal's lawyers, citing the break from the Vienna Convention, still hope for a review of the case, despite Texas' clear unwillingness to abide with the ICJ's ruling and Leal's fast-approaching execution date. Calling Leal's initial defense team hopelessly deficient, his lawyers cite what they call glaring errors in the investigation, trial, and punishment phase of the case against him 16 years ago.

Sandra Babcock, a Northwestern University law professor and clinical director of the school's Center for International Human Rights, took over Leal's defense in 2008, and has since sued Bexar County for refusing to allow re-testing of the one piece of DNA evidence used to convict Leal of capital murder.

Babcock first learned of Leal's case while working as director of the Mexican Capital Legal Assistance Program, the vast network for defending Mexicans charged with capital cases in Texas that she headed from 2000 to 2006. "The more I read in this case, there were just all these questions about the evidence used to convict him of a capital crime. And the more I learned, I just became convinced that there was not sufficient evidence for a capital crime," she said.

According to court records, police searched for and found Sauceda's body after Leal's brother and sister rushed back to the house party that morning, saying their brother had returned home rattled and mumbling he had killed someone. Leal walked into a police station later that day and gave two written statements to authorities, first saying he argued with the victim and left her on the side of the road near the party. In the second statement, given almost two hours later, he admitted he pushed the girl to the ground during a fight and ran away scared when she hit her head and stopped breathing.

But convicting Leal of capital murder, and sentencing him to death for it, hinged on proof that he kidnapped and raped the victim, evidence that Babcock insists isn't there.

When contacted about the case, Jose Guerrero, part of Leal's initial defense team, said he couldn't say if his former client had kidnapped, raped, or killed Sauceda. "I don't really know

anymore, to be honest with you. With all that testimony that was taken … there was just so much drinking, the drugs, I don't know if any of them really remembers."

Babcock, however, argues that Guerrero, formerly a public defender who has since walked away from capital murder cases, was part of an appallingly poor defense team — something she says would have been remedied had the Mexican consulate been involved. Records from the State Bar of Texas show Guerrero has been suspended or reprimanded for faulty defense multiple times, both before and after Leal's trial. Guerrero, who has since shifted his focus to immigration cases, said, "I mean, we were court-appointed. Anytime you're court-appointed, there are several problems, hoops you have to jump through." Guerrero said the defense never had the resources to call its own expert witnesses to analyze or challenge the prosecution's evidence, and admitted that the involvement of the Mexican consulate could have likely changed the case.

Records show investigators found no blood on the jeans, boots, socks, or T-shirt Leal wore the night of the murder, nor did investigators find blood on the floor mats of his car. What the prosecution called a "minute" spot of blood on Leal's underwear was the sole piece of DNA discovered and admitted as evidence against him during the trial: blood, the prosecution argued, that "could only have come from Adria Sauceda."

Elizabeth Johnson, a forensic scientist formerly with the Harris County Medical Examiner's Office hired by Babcock to review the DNA testimony and original test results, stated the prosecution's interpretation of the DNA at trial was misleading at best, and said those results neither eliminated nor confirmed that the blood belonged to the victim.

In an affidavit in Leal's appeal to re-test the DNA, Johnson stated the technology used 16 years ago is now outmoded, saying the state should re-test the evidence. Though it denied Leal's appeal, the Texas Court of Criminal Appeals wrote in 2009, "[W]ith the science available at the time of trial in 1994, no one could credibly say that an unknown blood sample came from a given individual."

Junk science

Apart from DNA evidence, Leal's lawyers insist his capital murder conviction was buttressed by pieces of dubious evidence that should have been questioned by his initial defense team.

One of the most alarming pieces of the story surrounding the murder is witness testimony that Sauceda was gang-raped the night of the party. The state's own witnesses threw some of the darkest shadows over the case, claiming that the severely intoxicated victim was taken to the backyard and repeatedly assaulted before Leal arrived. One of the state's witnesses even heard one of the men crudely encouraging partygoers to stick a bottle, or some other object, inside the victim — a gruesome foreshadowing of what would later befall the teenage girl.

The witnesses, under oath, also recalled Leal being furious when he drove up and learned of the rape, yelling, "Why? Why? Why did you let them do this?" and fighting with some of the other men.

Hours later, when the victim's body was found, police marked tire tracks circling the body — none of which matched Leal's car. Witnesses later testified they saw some of the men from the party with the victim's purse, scattering and possibly even trying to destroy its contents. Leal's sister, at a post-conviction hearing, claimed to have seen at least two men at the party with blood on their legs, though the state claimed she wasn't a credible witness.

Remarkably, no other suspects were questioned or charged with rape. Even more alarming: sperm swabs were taken from the victim's body but never tested for DNA. Leal has always claimed those tests would prove he never raped the victim. "That's the part of this case I have found so outrageous," Babcock said. "I do not understand why none of those men were ever questioned, charged, or prosecuted for rape. I can't believe that. I mean, when I look at the investigation, this is the kind of investigation that you would be shocked to find even in a robbery case. ... There are so many gaps, and frankly, I think the way that investigation was handled, it's insulting to the victim."

At trial, the prosecution also presented so-called Luminol tests, saying they proved the victim bled inside Leal's car when he attacked her. While the Luminol reacted to something, the trial record shows the substance was never actually tested. Luminol, which forensic scientists deem a precursory test for blood, reacts to a number of substances, including animal blood, simple household cleaners, and even some vegetable and organic compounds.

Many courts now rule out Luminol tests unless labs confirm for blood, Babcock said, arguing the evidence can be highly misleading. Babcock's team also discovered a sworn affidavit from Leal's father, where he claims he often used the car when he went deer hunting — something the prosecution never presented before the court, either to question the evidence or to even have it tested for Sauceda's DNA.

Another damning piece of evidence came from a forensic odontologist who testified that bite marks found on the victim's body matched Leal's teeth. (Investigators never took saliva swabs to test for DNA.) The prosecution used the bite marks as evidence to convict Leal, and even used it during the punishment phase of the trial when pushing for the death penalty, saying, "Humberto, he is the wolf with his fangs bared with the blood dripping, tasting. Imagine it. Tasting her terminal fear. What does it take for an animal like that to bite her as she dies?"

Yet, the forensic science community has largely rejected so-called bite-mark technology as junk science. According to a 2009 congressionally mandated study by the National Research Council of the National Academy of Sciences, there's "no evidence of an existing scientific basis for identifying an individual to the exclusion of others." The technique, the study also found, proved to have an alarmingly high rate of false-positive matches, and shouldn't be considered valid forensic evidence.

Battle for DNA

When the Bexar County District Attorney's Office filed a brief in 2009 denying access to re-test the DNA evidence, Assistant District Attorney Alan Battaglia stated further testing, regardless of the result, wouldn't prove Leal's innocence. He wrote that multiple pieces of irrefutable evidence tied Leal to the victim's kidnapping, rape, and death — not least of which were Leal's own statements to police that morning.

The DA's office also pointed out one of the most injurious pieces of evidence in the case, the fact that police found the victim's bloody blouse in a pile of dirty clothing at Leal's home. Leal's parents have a rationalization for the blouse, though it's one they never gave on the stand at trial. At a post-conviction hearing, Leal's father swore he found the blouse on the street early that morning and put it into a pile where he and his wife would collect clothing to donate to Mexico.

Guerrero, part of Leal's initial 1994 defense team, remembered the explanation, and remarked, "Yea, that seemed kind of suspect to us," adding that the defense team never thought the jury would buy it.

Babcock insists Leal's lawyers also failed him at his sentencing hearing by neglecting to conduct even the most basic research into Leal's life and history to present to the jury. A psychological test done on Leal within the past three years showed significant frontal lobe damage to his brain, and testing put him within the mildly mentally retarded range, Babcock said. Leal, she said, was frequently beat by his parents as a child and had to repeat five school grades.

First Assistant District Attorney Cliff Herberg insisted the push from Leal's lawyers over the consular-rights issue is simply the latest in a long string of failed appeals at the state and federal levels, meant to stall his inevitable execution. "The evidence in this case is overwhelming, it wasn't just the DNA," Herberg said. "The time for justice has come for Mr. Leal."

When contacted, the victim's father declined to comment.

State District Judge Maria Teresa Herr initially delayed setting Leal's execution date after U.S. State Department officials asked that she postpone the decision indefinitely while waiting for Congress to iron out a solution. That solution never came, and in November, Herr decided Texas had waited long enough, setting Leal's execution date for July 7. And there's no sign that a legislative fix could come any time soon, suggesting Leal will likely be the second Mexican to die at the hands of Texas in violation of international law.

And while Leal's lawyers think a judicial review could overturn his death sentence, Bellinger, the former State Department attorney, doubts a retrial would change the results of any of Texas' contentious cases involving Mexicans on death row.

While researching the problem for the Bush administration, Bellinger and others with the State Department flew to Texas to meet with local officials and browse the cases, including Leal's.

"While we did not dig through all of the evidence ourselves, we were familiar with the individual cases. ... It appeared to us that it would be unlikely that a review would change the original decision in those cases."

All the more reason, Bellinger insisted, that Texas authorities should review the death-row cases and then administer justice as they see fit.

But Katharine Huffman, a Washington-based attorney lobbying federal lawmakers to conform to international law, said both the departments of State and Justice "know this is really important, know about the execution date that's pending, and are working hard to try to address this problem quickly. ... There's an enormous amount of attention that's being paid to this by the international community."

The right to consular access is something that U.S. citizens abroad rely on "literally every day," Huffman said. "We've already got one irrevocable violation of that international obligation, and that's something that is taken very seriously by our international partners.

"To do that again? It's hard to dismiss it as an aberration if it happens again."

Should the U.S. continue to disregard its obligations under the Vienna Convention, American travelers risk losing what Bellinger called "one of the most important rights that Americans have if they're arrested abroad." And they'll only have Texas, and our unresponsive Congress, to blame.

Washington Post
EDITORIAL
June 13, 2011

Why The U.S. Should Allow Arrested Foreigners To Contact Their Consulates

Humberto Leal Jr. is scheduled to be put to death by the state of Texas next month for the 1994 murder of a 16-year-old girl. Like so many cases involving capital punishment, Mr. Leal's has generated controversy, but not for the typical reasons.

Mr. Leal is a Mexican national. When he was arrested, Texas officials failed to advise him of his right to communicate with his country's embassy as required by the Vienna Convention on Consular Relations. The United States, Mexico and some 160 other countries are signatories to the convention. Mr. Leal is one of roughly 40 Mexican nationals who were not advised about consular access and who sit on death row in this country.

Mexico filed a grievance on behalf of its nationals and prevailed in 2004 before the International Court of Justice (ICJ), the judicial arm of the United Nations. The ICJ concluded that the United States was obligated to comply with the treaty and that it should review these cases to determine whether the defendants had been harmed by the lack of notification.

Texas, where the majority of these inmates are held, balked. Three years ago, the state executed Jose Ernesto Medellin, another Mexican national who was not informed of his right to consular access and who was denied additional review. The state is likely to take the same approach in the Leal case. "Here, in Texas, if you commit terrible and heinous crimes you're going to pay the ultimate price," says Katherine Cesinger, press secretary to Gov. Rick Perry ®.

This misses the point entirely. This is not about coddling criminals nor is it a referendum on the death penalty. It is about a country's obligation to honor its treaty commitments. The United States must comply with the Vienna Convention — and demonstrate good faith in addressing past mistakes — if U.S. citizens abroad are to be afforded the same rights and protections.

Sen. Patrick J. Leahy (D-Vt.) is expected to introduce legislation as soon as this week to provide meaningful review in federal court for those denied consular access. The legislation should be narrowly tailored and mandate that the legal proceedings focus solely on whether denial of access seriously prejudiced an inmate's ability to defend against charges. The bar for success should be high, and only those who can provide compelling evidence of such harm should be allowed a new trial or benefit from a reduced sentence.

To avoid this problem in the future, federal and state governments should be diligent about abiding by the treaty's mandates. The State Department should continue its outreach to state and local governments to impress upon law enforcement officials the importance of the consular

notification. Complying with the treaty is not only the right thing to do; it is the smart and self-interested thing to do.

Washington Post
LETTER
June 18, 2011

Delay This Execution

By Thomas R. Pickering

The Post got it right in calling on government officials to diligently uphold our international treaty commitment to allow foreigners prompt and ongoing consular assistance [editorial, June 14]. My experience as a U.S. diplomat made clear that compliance with international obligations is critical to protecting Americans abroad, meeting foreign policy objectives and preserving our reputation as a law-abiding nation. The country's interests are not served by violating international law — as happened in the case of death row inmate Humberto Leal Jr.

These concerns are why I joined several former U.S. diplomats and State Department officials in urging Texas Gov. Rick Perry (R) to stay Mr. Leal's execution. Congress recently introduced sound legislation to bring the United States into compliance with our undisputed treaty obligations and to allow federal court review of the violations of consular rights in cases such as Mr. Leal's. Texas should stay his execution while legislation that could affect his case remains pending.

Washington Post
OPINION
June 24, 2011

Consular access: A two-way street on a crucial right

By Euna Lee

In 2009, while on assignment for Current TV, my colleague Laura Ling and I were arrested by North Korean soldiers for crossing the frozen Tumen River, which separates the Republic of China and North Korea. We were imprisoned and isolated from one another for $4^1/_2$ months. We were repeatedly interrogated, eventually put on trial and sentenced to 12 years' hard labor. It was only through the extraordinary efforts of the State Department and former president Bill Clinton that we were pardoned and allowed to return home.

It is difficult to describe the fear that comes with being arrested and detained in a foreign country. The sense of darkness in that first week of North Korean captivity was unbearable. My biggest fear was nobody knowing where I was or what had happened to me. The strained relations between the United States and North Korea only increased my despair.

In the middle of the second week, though, I was handed a lifeline: a meeting with the Swedish ambassador, who represented U.S. interests and pointed out to North Korea its responsibilities under the Vienna Convention on Consular Relations. His hard work yielded a meeting no longer than 10 minutes, but the significance is hard to express. I can only mention the sense of security I now had — that someone outside of North Korea was monitoring my case. The prompt consular access, I believe, protected me from any physical mistreatment by my captors. I was allowed to meet with the ambassador three more times. The meetings were my only communication with the U.S. government — the only way for me to ask for help and to deliver messages to my family. I know the importance of what the Vienna Convention provides.

Legislation has been introduced in Congress to ensure judicial review of death penalty cases involving foreign nationals who were not given consular access under the Vienna Convention. This legislation is not only a matter of honoring our obligations to such inmates. There are still many American journalists, aid workers, missionaries, members of the military and tourists detained in foreign countries. For all of them, and for their fearful families at home, there is nothing more important than upholding the reciprocal right to consular protection. With this legislation, Congress can protect that right.

The United States failed to abide by the Vienna Convention in the case of Humberto Leal Jr., a Mexican national who is scheduled to be executed in Texas on July 7. While I am not questioning the verdict of the jury that convicted him of murder, our obligations under the Vienna Convention are clear in all cases, including Leal's. Indeed, the International Court of

Justice (ICJ), the judicial arm of the United Nations, held that foreign nationals such as Leal have a right to a hearing to determine if they were harmed by not being told of their consular rights. Former president George W. Bush, all nine U.S. Supreme Court justices and the Obama administration agree that the United States is obligated to comply with the ICJ's decision.

Then why doesn't it? The United States has always been in the forefront of the fight for human rights. People look to us to be a watchdog for human rights violations around the globe. We ask the world to treat our citizens with respect when they are detained in other countries, including honoring their right to consular access. It is a two-way street. The United States must lead by example in honoring consular treaty obligations and in providing a remedy when that right is violated. If Congress does not act swiftly, other countries will be encouraged to violate the consular rights of U.S. citizens traveling abroad. I know firsthand that this is a risk we cannot take.

Euna Lee is a journalist and the author of "The World is Bigger Now: An American Journalist's Release from Captivity in North Korea."

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Online and Broadcast

Huffington Post
June 9, 2011

Texas Execution Could Risk Americans' Safety Abroad

By Sandra Babcock

This week, prominent bipartisan groups, including former U.S. diplomats, retired military leaders, former judges and prosecutors, and organizations representing Americans abroad called on the Texas Governor and Board of Pardons and Paroles to grant a stay of execution to Humberto Leal Garcia, a Mexican national on death row who is scheduled to be executed on July 7. These are not the usual suspects who call for clemency in a death penalty case; in fact, many of them undoubtedly support capital punishment. What unites this diverse group is their concern that if Mr. Leal is executed in violation of a binding judgment of the International Court of Justice, other nations will be emboldened to violate the consular rights of U.S. citizens arrested in foreign countries.

Article 36 of the Vienna Convention on Consular Relations, a treaty ratified by 173 nations, establishes that whenever the authorities arrest a foreign national, they must advise her that she has the right to have her consulate notified of her detention. This applies to foreign nationals arrested in the United States as well as to Americans detained abroad. American foreign exchange students, missionaries and others who have been wrongly detained overseas often say that the assistance of the consulate is more important than the advice of a foreign lawyer. American consulates can help them contact family members, obtain evidence back home, and assist in obtaining competent legal representation.

But when Texas authorities arrested Humberto Leal García, a Mexican national with no prior criminal convictions, they tried, convicted, and sentenced him to death without ever informing him of his consular rights and without notifying the Mexican consulate of his plight. On March 31, 2004, the International Court of Justice held that the United States had breached its obligations under Article 36 of the Vienna Convention in the case of Mr. Leal and 50 other Mexican nationals on death row. The ICJ held that, as a remedy for the violations of Article 36, the United States must provide judicial "review and reconsideration" of Mr. Leal's conviction and sentence to determine whether, and how, he was prejudiced by the violation of his consular rights.

Without the assistance of the Mexican consulate, Humberto Leal received disgracefully inadequate legal representation. One of his trial attorneys has been reprimanded or suspended from the practice of law on multiple occasions as a result of ethical violations. Mr. Leal was convicted on the basis of junk "bite mark" science, since discredited by the National Academy of Sciences, and patently unreliable forensic evidence. Although the prosecution's case was reed

thin, his defense failed to effectively challenge any of this evidence. During his sentencing hearing, which lasted only a single day, Mr. Leal's attorneys failed to present any of the profoundly mitigating evidence that later came to light with the assistance of the Mexican government. The jury that sentenced Mr. Leal to death never learned that he was the victim of horrific sexual abuse by his parish priest, which had severe and lasting effects. Jurors never realized that Mr. Leal had struggled to overcome learning disabilities and frontal lobe brain damage and spent his childhood dodging neighborhood gangs and beatings from his parents. Based on the distorted, incomplete picture of Mr. Leal provided by the prosecution, he never stood a chance.

Former President Bush directed the Texas courts to review Mr. Leal's conviction and sentence in accordance with the ICJ's decision, but Texas refused. The United States Supreme Court has found that while the U.S. has an international legal obligation to comply with the ICJ's decision, only Congress can implement the decision by passing legislation. Congress is now poised to do just that – but Texas has announced that it nonetheless intends to go forward with Mr. Leal's execution. A stay of execution is essential to prevent an irreparable breach of the United States' treaty commitments, and to protect the rights of all Americans who rely on the protections of the Vienna Convention. And unless Mr. Leal receives a reprieve, he will die before he ever sees justice.

For more information about Mr. Leal's case and the efforts to save his life, visit www.humbertoleal.org.

Opinio Juris
June 14, 2011

Proposed Legislation Seeks VCCR Compliance By The United States

By Duncan Hollis

Those who have followed the cases relating to the Vienna Convention on Consular Relations (VCCR) here in the United States and at the ICJ know that the United States has a compliance problem. The United States does not provide the 'judicial review and reconsideration' remedy that the ICJ has indicated is required in the event a violation of an individual's rights under Article 36 of the VCCR, and the Supreme Court has indicated that the President alone cannot order U.S. states to provide those remedies. Since 2008, many commentators have suggested that the solution to this problem lies with Congress. Earlier attempts to enact legislation authorizing the necessary procedural steps to put the United States in compliance have fallen short. Senator Patrick Leahy, however, is ready to try again in light of a pending execution of a Mexican national in Texas (apparently scheduled for July 7), which also seems certain to revive international attention to this issue.

Today, Leahy introduced the Consular Notification Compliance Act (for the text see here), which will give U.S. federal courts jurisdiction to provide the ICJ-dictated remedy. Here's the quick take from Senator Leahy's press release:

The Leahy-authored Consular Notification Compliance Act will give jurisdiction to federal courts to review the cases of foreign nationals currently on death row in the United States who did not receive consular access as required by the VCCR. It includes those individuals covered by a 2004 decision by the International Court of Justice, which held that the U.S. must review the convictions and death sentences of more than 50 Mexican nationals who had not been notified of their right to consular access. The legislation would also clarify for future cases that courts must ensure that all foreign nationals charged with a capital offense are informed of their right to contact their consulate. More than 100 foreign nationals from more than 30 countries are currently on death row in the United States.

And here's what Senator Leahy had to say in longer remarks introducing his bill:

Each year, thousands of Americans are arrested and imprisoned when they are in foreign countries studying, working, serving the military, or traveling. From the moment they are detained, their safety and well-being depends, often entirely, on the ability of United States consular officials to meet with them, monitor their treatment, help them obtain legal assistance, and connect them to family back home. That access is protected by the consular notification provisions of the VCCR, but it only functions effectively if every country meets its obligations under the treaty – including the United States.

Unfortunately, in some instances, the United States has not been meeting those obligations. There are currently more than 100 foreign nationals on death row in the United States, most of whom were never told of their right to contact their consulate and their consulate was never notified of their arrest, trial, conviction, or sentence. There are many other foreigners in U.S. prisons awaiting trial for non-capital crimes, some facing life sentences, who were similarly denied consular access. This failure to comply with our treaty obligations undercuts our ability to protect Americans abroad and deeply damages our image as a country that abides by its promises and the rule of law. It would also be completely unacceptable to us if our citizens were treated in this manner.

The Consular Notification Compliance Act seeks to bring the United States one step closer to compliance with the convention. It is not perfect. It focuses only on the most serious cases – those involving the death penalty – but it is a significant step in the right direction and we need to work together to pass it quickly. Texas is posed to execute the next foreign national affected by this failure to comply with the treaty on July 7, 2011. He was not notified of his right to consular assistance, and the Government of Mexico has expressed grave concerns about the case. We do not want this execution to be interpreted as a sign that the United States does not take its treaty obligations seriously. That message puts American lives at risk.

The Government of Great Britain has expressed similar concerns about a case involving a British citizen facing the death penalty here, who was denied consular access.

The bill I am introducing would allow foreign nationals who have been convicted and sentenced to death to ask a court to review their cases and determine if the failure to provide consular notification led to an unfair conviction or sentence.

The bill also recognizes that law enforcement and the courts must do a better job in the future to promptly notify individuals of their right to consular assistance so the United States does not find itself in this precarious position again. To that end, the bill reaffirms that the obligations under the treaty are Federal law and apply to all foreign nationals arrested or detained in the United States. For individuals arrested on charges that carry a possible punishment of death, the bill ensures adequate opportunity for consular assistance before a trial begins. . . . .

I saw the need to resolve this issue first-hand this spring when a young, innocent Vermont college student was detained by Syrian police simply for taking photos of a demonstration. I

worked hard with the U.S. consulate in Syria to obtain access to him. His safety depended on the ability of our consular officers to see him, provide assistance, and monitor his condition.

Similarly, the United States invoked the VCCR to seek access to the three American hikers detained in Iran after accidently crossing an unmarked boarder in 2009. In 2001, when a U.S. Navy surveillance plane made an emergency landing in Chinese territory, the State Department cited the VCCR in demanding immediate access to the plane's crew. . . .

This bill has the support of the Obama administration, including the Department of Justice, the Department of Defense, the Department of Homeland Security, and the Department of State. I have heard from retired members of the military urging passage of the bill to protect servicemen and women and their families overseas, and from former diplomats of both political parties who know that compliance with our treaty obligations is critical for America's national security and commercial interests. I ask unanimous consent to include those letters in the Record, as well as a recent public letter signed by retired judges and prosecutors from around the country urging the Governor of Texas to delay the upcoming execution to allow Congress time to act.

In short, it sure looks like the consular stuff is coming back (especially with a July 7, 2011 execution date). As a result, Leahy's bill and the potential for a new round of executions will bear watching.

National Law Journal
OPINION
June 27, 2011

Time to comply with the Vienna Convention

The U.S. is obliged to afford a judicial remedy to foreign nationals like Humberto Leal, scheduled to be executed July 7.

Lori F. Damrosch

U.S. citizens travel, study and work abroad in vast numbers. Every year, thousands of them are detained and sometimes jailed, not always under circumstances comporting with U.S. views of due process. The bulwark of their protection is the Vienna Convention on Consular Relations, which binds the United States and 172 other countries to notify nationals of treaty partners who are arrested or detained of their right to contact the consulate of their country.

The Vienna Convention has been the supreme law of the land since 1969, when it was unanimously approved by the Senate and brought into force by President Richard Nixon. The Senate gave advice and consent on the basis that the treaty would be self-executing — that is, that no implementing legislation would be needed.

This premise turned out to be incorrect. In *Medellin v. Texas* (2008), the U.S. Supreme Court held that an international judgment based on the Vienna Convention could not be given effect as directly applicable federal law. Rather, Congress would have to adopt the necessary legislation to enable the United States to comply with its treaty obligations.
It is now urgent for Congress to enact such legislation. Since 2004, when Mexico obtained a ruling from the International Court of Justice (ICJ) on remedies for U.S. treaty violations

affecting 51 Mexican nationals on death row in U.S. states (*Avena and Other Mexican Nationals*), the United States has been under a binding obligation to afford a judicial remedy to those individuals.
One of them, Humberto Leal, is scheduled to be executed by the state of Texas on July 7. As in*Medellin*, Texas maintains that despite the binding force of the ICJ judgment in international law, Texas is not required to implement it unless Congress enacts legislation so providing. Until Congress acts, the United States remains in continuing default of its international legal obligations; and if it does not act before Leal's execution date, the damage will be irreparable.
The United States has a long history of successfully resolving disputes over consular rights through international arbitration and adjudication. In 1927, a U.S.-Mexican claims commission held that "a foreigner, not familiar with the laws of the country where he temporarily resides, should be given opportunity" for consular access. The Vienna Convention codifies this international practice.

Under Article 36 of the Vienna Convention, a foreign national who is arrested or detained for any reason whatsoever must be notified "without delay" of his right to communicate with the consular post of his country. The 51 Mexican nationals covered by the Avena judgment were not given any such notice and thus Mexico was unable to give them consular services in their trials on capital charges.

Between 1969 and 2005, the United States consented to an optional protocol to the Vienna Convention under which disputes with other treaty partners could be brought to the ICJ for binding decision. In 1979, the United States invoked this procedure against Iran in the Tehran hostages case and received unanimous favorable decisions from the ICJ in 1979 and 1980, which helped the United States muster support from other states toward resolution of the hostage crisis in January 1981.

Mexico availed itself of this same consent-based procedure in asking the ICJ to determine the remedy for repeated U.S. breaches of the Vienna Convention. The United States did not contest that Texas and several other states had placed the United States in violation of binding obligations to Mexico by failing to notify the 51 death row inmates of their right to contact the Mexican consulate. The ICJ ruled that the remedy for the treaty violations would be judicial hearings to review whether there had been prejudice affecting each national's conviction or sentence from the lack of consular notice.

The case of Leal is illustrative of the need for consular services when foreign nationals are on trial for serious charges. Leal was born in Mexico and moved to a poverty-stricken area of San Antonio, where his family struggled in unfamiliar circumstances. He suffered from brain damage, learning disabilities and abusive treatment, including sexual abuse by a priest. Although he had to repeat several school grades, he became the first member of his family to graduate from high school and never had a criminal conviction before being arrested for murder.

Without resources, Leal received grossly inadequate representation during his pretrial, trial, sentencing and appellate proceedings. One of his trial attorneys has twice been suspended from law practice. Counsel failed to challenge unreliable forensic evidence at trial or to introduce mitigating evidence at the penalty phase. The Mexican government regularly offers consular services in death penalty cases that could have changed the result and averted the death sentence.

On June 14, Senator Patrick Leahy (D-Vt.) introduced legislation that would ensure U.S. compliance with international obligations pursuant to Article 36 of the Vienna Convention on Consular Relations. The "Consular Notification Compliance Act" provides for federal court review in cases of foreign nationals convicted and sentenced to death prior to its enactment, specifically on the question of whether the denial of prompt and ongoing consular access resulted in prejudice in those cases. The legislation also increases opportunities to ensure early compliance with all consular notification in future capital cases involving foreign nationals. Congress must move quickly to pass this legislation. In the meantime, Leal's execution should be stayed to avoid the irreparable damage that will result if he is executed before the treaty-based judicial hearing that the United States is obliged to provide.

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